

CIVIL MINUTE ORDER

CASE NO. 078706

DATE: 12/30/94

DEPT: 203

CASE NAME: STATE OF CALIFORNIA VS COMMUNITY REDEVELOPMENT CO.

CASE CATEGORY: Misc. Petition

HEARING: Ruling on Matter Submitted 12/19/94 RE: MOTION TO QUASH SERVICE
OF SUMMONS

Honorable JUDGE Lawrence W. Fry, Presiding

Clerk: M.GARCIA

Court Reporter: NONE

Having Considered the Submitted Matter the court rules as follows

MOTION TO QUASH Granted

SEE ATTACHED

Event

Motion of the Aqua Caliente band of Cahuilla Indians to Quash Service of Summons - Granted.

Discussion:

This is an action for declaratory and injunctive relief by the State of California (State) challenging the ability of the Redevelopment Agency of Palm Springs to convey certain parcels of Agency owned land to the Aqua Caliente band of Cahuilla Indians (Tribe). The Tribe wishes to purchase the land for additional parking for a gaming facility the Tribe proposes to build on adjacent land all within the Aqua Caliente Indian Reservation.

The Tribe moves to quash the service of the summons pursuant to CCP 418.10 on the grounds that the Tribe has sovereign immunity from such suits, it has not waived that immunity and the parcels in question have been part of its reservation since 1876.

In their Complaint the State appears to state the Tribe has waived their sovereign immunity by virtue of the Tribe's substantial activities off the reservation land and in the County of Riverside. The State however, does not address this contention in their opposition to the Tribe's motion. The Tribe on the other hand has presented unrefuted authority that any waiver of tribal sovereign immunity must be express and unequivocal which was not the case in this action.

In its opposition, the State argues that the doctrine of sovereign immunity was judicially created and should not "preclude this Court's exercise of jurisdiction over the Agua Caliente Band in the present action, which involves neither a coercive order nor monetary damages."

Unfortunately for the State, overwhelming authority exists to counter their argument. In People of State of California v. Quechan Tribe of Indians 595 F.2d 1153, 1155, (9th Cir. 1979) the Court stated: "sovereign immunity involves a right which courts have no choice, in the absence of a waiver, but to recognize." It has also been held that a Tribe's sovereign immunity from suit extends to suits such as the present one which involve declaratory and injunctive relief. Imperial Granite Co. V. Pala Band of Indians 940 F.2d 1269, 1271 (9th Cir. 1991).

The State in effect, urges the Court to disregard this precedent. At the hearing, the Court asked counsel for the State: "do you feel that you are asking the Court to make a policy decision here that is not supported by case law at this point?" Counsel for the State responded: "In a sense, that may be true." Later the Court queried: "Is that appropriate for this Court to make that type of policy decision, counsel? I mean your cases -- I think you are correct in saying the cases are really against you." The response was: "I understand, and all I could say is we have to start some

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place.

As stated in Witkin, California Procedure, Third Edition, Appeal, §758 "The doctrine of stare decicis expresses a fundamental policy of common law jurisdictions, that a rule once declared in an appellate decision constitutes a precedent which should normally be followed by certain other courts in cases involving the same problem. It is based on the assumption that certainty, predictability and stability in the law are the major objectives of the legal system".

The Court is not inclined to disregard legal precedent and therefore grants the Tribe's motion to Quash the Summons.

Fair Political Practices Commission v. Agua Caliente Band of Cahuilla Indians, et al,
Case No. 02AS04545

Proof of Service

I am employed in the City of Escondido and County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is Law Offices of Art Bunce, 430 North Cedar St., Suite H, Escondido, CA 92025.

On November 6, 2002 I served the attached

Requests for Judicial Notice in Support of Motion of Specially-
Appearing Defendant Agua Caliente Band of Cahuilla Indians
to Quash Service for Lack of Personal Jurisdiction

on the party(ies) in this action by placing a true copy thereof in the sealed envelope(s), addressed as follows:

Steven Benito Russo, Esq.
Luisa Menchaca, Esq.
William L. Williams, Jr., Esq.
Holly B. Armstrong, Esq.
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814



(BY MAIL) I placed such sealed envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at The Law Offices of Art Bunce, Escondido, California, following ordinary business practices. I am familiar with the practice of the Law Offices of Art Bunce for collection and processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Escondido, California on November 6, 2002.


Sue C. Calvert